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8 **BEFORE THE**
9 **BOARD OF PHARMACY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 4277

13 **DARRELL M. MONTI**

DEFAULT DECISION AND ORDER

14 **2300 Oakdale Road 90**
15 **Modesto, CA 95355**

[Gov. Code, §11520]

16 **Pharmacy Technician Registration No. TCH**
17 **84805**

Respondent.

18 **FINDINGS OF FACT**

19 1. On or about November 2, 2012, Complainant Virginia K. Herold, in her official
20 capacity as the Executive Officer of the California State Board of Pharmacy, filed Accusation No.
21 4277 against Darrell M. Monti (Respondent) before the Board of Pharmacy. (Accusation
22 attached as Exhibit A.)

23 2. On or about July 28, 2008, the California State Board of Pharmacy (Board) issued
24 Pharmacy Technician Registration No. TCH 84805 to Respondent. The Pharmacy Technician
25 Registration was in full force and effect at all times relevant to the charges brought in Accusation
26 No. 4277 expired on May 31, 2012, and has not been renewed. This lapse in licensure, however,
27 pursuant to Business and Professions Code section 118(b) and/or agency-specific statute does not
28 deprive the [Board] of its authority to institute or continue this disciplinary proceeding.

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1 3. On or about November 28, 2012, Respondent was served by Certified and First Class
2 Mail copies of the Accusation No. 4277, Statement to Respondent, Notice of Defense, Request
3 for Discovery, and Discovery Statutes (Government Code sections 11507.5, 11507.6, and
4 11507.7) at Respondent's address of record which, pursuant to Business and Professions Code
5 section 4100, is required to be reported and maintained with the Board. Respondent's address of
6 record was and is:

7 2300 Oakdale Road 90
8 Modesto, CA 95355.

9 4. Service of the Accusation was effective as a matter of law under the provisions of
10 Government Code section 11505, subdivision (c) and/or Business & Professions Code section
11 124.

12 5. On or about January 9, 2013, the certified mailing of the aforementioned documents
13 was returned by the U.S. Postal Service marked "Unclaimed."

14 6. Government Code section 11506 states, in pertinent part:

15 (c) The respondent shall be entitled to a hearing on the merits if the respondent
16 files a notice of defense, and the notice shall be deemed a specific denial of all parts
17 of the accusation not expressly admitted. Failure to file a notice of defense shall
18 constitute a waiver of respondent's right to a hearing, but the agency in its discretion
19 may nevertheless grant a hearing.

20 7. Respondent failed to file a Notice of Defense within 15 days after service upon him
21 of the Accusation, and therefore waived his right to a hearing on the merits of Accusation No.
22 4277.

23 8. California Government Code section 11520 states, in pertinent part:

24 (a) If the respondent either fails to file a notice of defense or to appear at the
25 hearing, the agency may take action based upon the respondent's express admissions
26 or upon other evidence and affidavits may be used as evidence without any notice to
27 respondent.

28 9. Pursuant to its authority under Government Code section 11520, the Board of
Pharmacy finds Respondent is in default. The Board of Pharmacy will take action without further
hearing and, based on the relevant evidence contained in the Default Decision Evidence Packet in
this matter, as well as taking official notice of all the investigatory reports, exhibits and

1 statements contained therein on file at the Board offices regarding the allegations contained in
2 Accusation No. 4277, finds that the charges and allegations in Accusation No. 4277, are
3 separately and severally, found to be true and correct by clear and convincing evidence.

4 10. Taking official notice of its own internal records, pursuant to Business and
5 Professions Code section 125.3, it is hereby determined that the reasonable costs for Investigation
6 and Enforcement is \$***Costs*** as of January 30, 2013.

7 DETERMINATION OF ISSUES

8 1. Based on the foregoing findings of fact, Respondent Darrell M. Monti has subjected
9 his Pharmacy Technician Registration No. TCH 84805 to discipline.

10 2. The agency has jurisdiction to adjudicate this case by default.

11 3. The Board of Pharmacy is authorized to revoke Respondent's Pharmacy Technician
12 Registration based upon the following violations alleged in the Accusation which are supported
13 by the evidence contained in the Default Decision Evidence Packet in this case.:

14 a. Respondent is subject to disciplinary action for unprofessional conduct under section
15 4300, subdivision (a) and section 4301, subdivision (f) for committing dishonest acts.

16 b. Respondent is subject to disciplinary action for unprofessional conduct under section
17 4300, subdivision (a) and section 4301, subdivision (j) in that Respondent obtained controlled
18 substances in violation of laws regulating controlled substances and dangerous drugs, namely
19 Health and Safety Code section 11173, subdivision (a).

20 c. Respondent is subject to disciplinary action for unprofessional conduct under section
21 4300, subdivision (a) and section 4301, subdivision (l) as well as section 490 for having been
22 convicted of crimes.

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Pursuant to Government Code section 11520, subdivision (c), Respondent may serve a written motion requesting that the Decision be vacated and stating the grounds relied on within seven (7) days after service of the Decision on Respondent. The agency in its discretion may vacate the Decision and grant a hearing on a showing of good cause, as defined in the statute.

It is so ORDERED ON April 23, 2013.

H. C. Wessie

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SA2012105559

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Exhibit A

Accusation

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2 JANICE K. LACHMAN
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7 *Attorneys for Complainant*

8 **BEFORE THE**
9 **BOARD OF PHARMACY**
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 4277

13 **DARRELL M. MONTI**
2300 Oakdale Road 90
Modesto, CA 95355

ACCUSATION

14 Pharmacy Technician Registration No. TCH 84805

15 Respondent.

16
17 Complainant alleges:

18 **PARTIES**

19 1. Virginia Herold (Complainant) brings this Accusation solely in her official capacity
20 as the Executive Officer of the Board of Pharmacy, Department of Consumer Affairs.

21 2. On or about July 28, 2008, the Board of Pharmacy issued Pharmacy Technician
22 Registration Number TCH 84805 to Darrell M. Monti (Respondent). The Pharmacy Technician
23 Registration was in full force and effect at all times relevant to the charges brought herein and
24 expired on May 31, 2012.

25 **JURISDICTION**

26 3. This Accusation is brought before the Board of Pharmacy (Board), Department of
27 Consumer Affairs, under the authority of the following laws. All section references are to the
28 Business and Professions Code unless otherwise indicated.

4. Section 118, subdivision (b), of the Code provides that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.

STATUTORY PROVISIONS

5. Section 4300 of the Code states:

“(a) Every license issued may be suspended or revoked.

(b) The board shall discipline the holder of any license issued by the board, whose default has been entered or whose case has been heard by the board and found guilty, by any of the following methods:

(1) Suspending judgment.

(2) Placing him or her upon probation.

(3) Suspending his or her right to practice for a period not exceeding one year.

(4) Revoking his or her license.

(5) Taking any other action in relation to disciplining him or her as the board in its discretion may deem proper.

(e) The proceedings under this article shall be conducted in accordance with Chapter 5 (commencing with Section 11500) of Part 1 of Division 3 of the Government Code, and the board shall have all the powers granted therein. The action shall be final, except that the propriety of the action is subject to review by the superior court pursuant to Section 1094.5 of the Code of Civil Procedure.”

6. Section 4301 of the Code states:

"The board shall take action against any holder of a license who is guilty of unprofessional conduct or whose license has been procured by fraud or misrepresentation or issued by mistake. Unprofessional conduct shall include, but is not limited to, any of the following:

• • •

(f) The commission of any act involving moral turpitude, dishonesty, fraud, deceit, or corruption, whether the act is committed in the course of relations as a licensee or otherwise, and whether the act is a felony or misdemeanor or not.

• • •

(j) The violation of any of the statutes of this state, of any other state, or of the United States regulating controlled substances and dangerous drugs.

• • •

(l) The conviction of a crime substantially related to the qualifications, functions, and duties of a licensee under this chapter. The record of conviction of a violation of Chapter 13 (commencing with Section 801) of Title 21 of the United States Code regulating controlled substances or of a violation of the statutes of this state regulating controlled substances or dangerous drugs shall be conclusive evidence of unprofessional conduct. In all other cases, the record of conviction shall be conclusive evidence only of the fact that the conviction occurred. The board may inquire into the circumstances surrounding the commission of the crime, in order to fix the degree of discipline or, in the case of a conviction not involving controlled substances or dangerous drugs, to determine if the conviction is of an offense substantially related to the qualifications, functions, and duties of a licensee under this chapter. A plea or verdict of guilty or a conviction following a plea of nolo contendere is deemed to be a conviction within the meaning of this provision. The board may take action when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing the accusation, information, or indictment.

...

(o) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of or conspiring to violate any provision or term of this chapter or of the applicable federal and state laws and regulations governing pharmacy, including regulations established by the board or by any other state or federal regulatory agency."

7. Health and Safety Code section 11173, subdivision (a) states in part:

"No person shall obtain or attempt to obtain controlled substances, or procure or attempt to procure the administration of or prescription for controlled substances, (1) by fraud, deceit, misrepresentation, or subterfuge; or (2) by the concealment of a material fact. . . ."

8. Section 4022 of the Code states:

"Dangerous drug" or "dangerous device" means any drug or device unsafe for self-use in humans or animals, and includes the following:

(a) Any drug that bears the legend: "Caution: federal law prohibits dispensing without prescription," "Rx only," or words of similar import.

(b) Any device that bears the statement: "Caution: federal law restricts this device to sale by or on the order of a _____," "Rx only," or words of similar import, the blank to be filled in with the designation of the practitioner licensed to use or order use of the device.

(c) Any other drug or device that by federal or state law can be lawfully dispensed only on prescription or furnished pursuant to Section 4006."

9. Section 490 of the Code provides, in pertinent part, that a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime substantially

1 related to the qualifications, functions, or duties of the business or profession for which the
2 license was issued.

3 **COST RECOVERY**

4 10. Section 125.3 of the Code states, in pertinent part, that the Board may request the
5 administrative law judge to direct a licensee found to have committed a violation or violations of
6 the licensing act to pay a sum not to exceed the reasonable costs of the investigation and
7 enforcement of the case.

8 **DRUG AT ISSUE**

9 • Hydrocodone APAP, is a Schedule III controlled substance as designated by Health and
10 Safety Code section 11056, subdivision (e)(4).

11 **FIRST CAUSE FOR DISCIPLINE**

12 **(Dishonest Act)**

13 11. Respondent is subject to disciplinary action for unprofessional conduct under section
14 4300, subdivision (a) and section 4301, subdivision (f) in that Respondent admitted that while
15 employed at Safeway Pharmacy in Modesto and Turlock, he stole approximately 4000
16 hydrocodone APAP 10/325 tablets between 2008 through 2010.

17 **SECOND CAUSE FOR DISCIPLINE**

18 **(Violation of Law Regulating Controlled Substances)**

19 12. Respondent is subject to disciplinary action for unprofessional conduct under section
20 4300, subdivision (a) and section 4301, subdivision (j) in that Respondent obtained controlled
21 substances in violation of laws regulating controlled substances and dangerous drugs, namely
22 Health and Safety Code section 11173, subdivision (a), as further set forth in paragraph 10,
23 above.

24 **THIRD CAUSE FOR DISCIPLINE**

25 **(Conviction of Crime)**

26 13. Respondent is subject to disciplinary action for unprofessional conduct under section
27 4300, subdivision (a) and section 4301, subdivision (l) as well as section 490 in that on
28 September 14, 2011, Respondent was convicted on his guilty plea to two counts of Penal Code

1 section 487(a) (Grant Theft), felonies. The circumstances are that on or about and between
2 March 1, 2009 and July 1, 2010, Respondent willfully, unlawfully and feloniously took the
3 property of Walgreen's Pharmacy, to wit: Hydrocodone APAP 10/325 tablets which exceeded
4 \$400 in value. Respondent committed these acts while he was employed at the Modesto
5 Walgreen's and continued his thefts once he was transferred to the Turlock Walgreen's location,
6 and as set forth above in paragraphs 10-11.

7 **FOURTH CAUSE FOR DISCIPLINE**

8 **(Violation of Pharmacy Laws)**

9 14. Respondent is subject to disciplinary action for unprofessional conduct under section
10 4300, subdivision (a) and section 4301, subdivision (o) as set forth above in paragraphs 10-12.

11 **PRAYER**

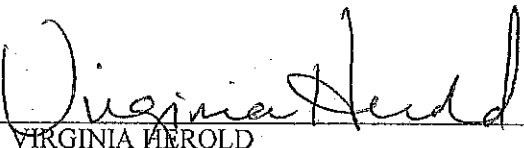
12 WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged,
13 and that following the hearing, the Board of Pharmacy issue a decision:

14 1. Revoking or suspending Pharmacy Technician Registration Number TCH 84805,
15 issued to Darrell M. Monti.;

16 2. Ordering Darrell M. Monti to pay the Board of Pharmacy the reasonable costs of the
17 investigation and enforcement of this case, pursuant to Business and Professions Code section
18 125.3;

19 3. Taking such other and further action as deemed necessary and proper.

20
21 DATED: 11/2/12


22 VIRGINIA HEROLD
23 Executive Officer
24 Board of Pharmacy
25 Department of Consumer Affairs
26 State of California
27 Complainant
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